

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOSHUA STATTON,

Plaintiff,

Case No.: 8:19 cv 485 T 33 CPT

vs.

FLORIDA FEDERAL JUDICIAL
NOMINATING COMMISSION,
CARLOS LOPEZ-CANERA,

Defendants.

COMPLAINT

Plaintiff, JOSHUA STATTON, brings this action against Defendants, (1) Florida Federal Judicial Nominating Commission, (also as "Florida FJNC", (2) Carlos Lopez-Cantera, in his capacity as Statewide Chair of Florida FJNC, to compel immediate compliance with the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and release documents of certain judicial nominee, Thomas P. Barber, consisting of application form and supporting documents provided by Thomas Barber for the purpose of his appointment to the vacant seat created in Middle District of Florida.

As grounds therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

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PARTIES

3. Plaintiff, JOSHUA STATTON, is Directing Member of Florida for Transparency, a not-for-profit organization incorporated under the laws of Florida and headquartered at PO Box St. Pete Beach, Florida 33736. Mr. Statton is a resident of Pinellas County, Florida and is *sui juris*.
4. Defendant FLORIDA FEDERAL NOMINATING JUDICIAL COMMISSION, (as "Florida FJNC"), is a commission formed jointly on April 20, 2017 by Florida's Senators, Marco Rubio and Bill Nelson. The purpose of the Commission is to recruit, vet, and select qualified candidates for vacant judicial seats in the State of Florida. The Florida FJNC has possession, custody, and control of the records to which Plaintiff seeks access.
5. Defendant, CARLOS LOPEZ-CANTERA, is the Statewide Chair of the Florida Federal Nominating Judicial Commission, and has possession, custody, and control of records to which Plaintiff seeks access. Mr. Lopez-Cantera is a resident of Miami-Dade county, and is *sui juris*.

STATEMENT OF FACTS

6. On February 22, 2019 and then again on February 24, Plaintiff sent a FOIA request to Defendant, Carlos Lopez-Cantera, in his capacity as Statewide Chair for Florida FJNC, seeking access to the following:
 - (a) A copy of the original application submitted by Judge Thomas Barber for the vacant judicial seat in Middle District of Florida,
 - (b) All supporting documentation provided by Judge Thomas Barber for his application for the vacant judicial seat in Middle District of Florida.

7. By way of emails dated February 22, 2019, Defendant Lopez-Cantera acknowledged receiving Plaintiff's requests for said documents listed in paragraph 6. *See Exhibit 1: Email Thread Exchange between Plaintiff and Defendant Lopez-Cantera.*
8. Defendant Lopez-Cantera initially responded to Plaintiff's request by stating that Chapter 119 requests are inapplicable for release of documents pertaining to judges in the State of Florida.
9. Plaintiff then requested the same documents under FOIA. *See Exhibit 1 and Exhibit 2: Electronic FOIA Request.* Once Plaintiff converted his request to a FOIA request, Defendant Lopez-Cantera stopped communicating with Plaintiff, taking the position that he would close the investigation within a few minutes of him having opened the investigation, expressing the willingness to forward any such information to the appropriate committee in D.C.
10. Plaintiff then followed up with correspondence in which he explained that Judge Barber's answers to Question #21 on the application are believed to contain false information as well as material omissions. *See Exhibit 3: Follow Up Letter to Statewide Chair.* Question #21 has to do with "Recusals" which have been filed before Judge Barber, and about which Judge Barber was mandated to make a full disclosure in his application for said judicial seat. *See Exhibit 3: Application Form for Judicial Nomination.*
11. Despite the gravity of the situation and need to ensure that Judge Barber's answers to Question #21 are true and correct, Defendant Lopez-Cantera has refused to release the requested documents.

12. This FOIA request is of utmost urgency because the appointment of this judicial candidate, Thomas Barber, to a life-time seat on the federal bench is imminent. Neither Plaintiff nor the public can wait for 20 days until a response is received to the FOIA request submitted by electronic email on February 24, 2019. See *Exhibit 2*.
13. Judge Thomas Barber was reported out of the Senate Judiciary Committee on February 7, 2019 with a vote of 20-2 by Senators who were not made aware of his answer to Question #21 as being false, constituting a material misrepresentation and material omission in this sworn application.
14. Defendant Lopez-Cantera is aware of the urgency of this matter and yet continues to refuse to release the application and supporting documents submitted by Judge Barber.
15. Requested information is not personal information, such as the nominee's finances. Requested information pertains to the nominee's disclosures about prior recusals filed in proceedings over which the candidate has presided.
16. Based on information and belief, Plaintiff asserts that Judge Thomas Barber intentionally omitted and misrepresented his answers to Question #21, having to do with prior recusals filed against him in his judicial capacity as a circuit judge.
17. As of the date of this complaint, Defendant Lopez-Cantera has failed to: (i) determine whether to comply with the request; (ii) notify Plaintiff of any such determination or the reasons therefor; (iii) advise Plaintiff of the right to appeal any adverse determination; and/or (iv) produce the requested records or otherwise demonstrate that the requested records are exempt from production.

18. Based on the imminent appointment of Thomas Barber to the vacant judicial seat in Middle District of Florida, Plaintiff is deemed to have exhausted any and all administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C).

COUNT I

(Violation of FOIA, 5 U.S.C. § 552)

19. Plaintiff realleges paragraphs 1 through 19 as if fully stated herein.

20. Defendants, Carlos Lopez-Cantera and Florida Federal Judicial Nominating Commission are unlawfully withholding records requested by Plaintiff under FOIA. These documents pertain to the judicial nomination of circuit court Judge Thomas Barber for the vacant judicial seat in Middle District of Florida.

21. The requested documents are not documents that are financial or private in nature. Requested documents can also be redacted to protect the privacy of the judicial nominee with respect to the nominee's other answers pertaining to financial and/or other potentially private matters.

22. Immediate release of these documents is needed due to imminent confirmation of Judge Barber to the vacant judicial seat in Middle District of Florida

23. Plaintiff is being irreparably harmed by reason of Defendant's unlawful withholding of records responsive to Plaintiffs' FOIA request, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendants to produce, immediately, any and all records responsive to Plaintiff's FOIA request and a *Vaughn* index of any responsive records withheld under claim of exemption; (2) enjoin

Defendants from continuing to withhold any and all records responsive to Plaintiff's FOIA request; (3) grant Plaintiff an award of litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

FILED ON FEBRUARY 25, 2019

RESPECTFULLY SUBMITTED BY,


/s/ Joshua Statton

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